FILED
AUG 29 1944
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1944

No. 412

J. R. MASON,
Petitioner,

vs.

GLENN-COLUSA IRRIGATION DISTRICT,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

W. COBURN COOK,
Berg Building, Turlock, California,
Counsel for Petitioner.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

Subject Index

	Page
Petition for Writ of Certiorari	1
Opinion Below	2
Jurisdiction	2
Statutes Involved	2
Summary Statement of the Matter Involved	2
Questions Presented	4
Reasons for Granting Writ of Certiorari	6
Brief in Support of Petition for Writ of Certiorari	9
Factual Background of the Case	9
Opening Statement	12
The District Court Opinions	16
Argument	20
I. The court's jurisdiction over the proceeding, particularly as to distribution, continues until discharge	20
II. The interlocutory decree cannot be binding on the court and the court's conscience since not binding on the bankrupt	22
III. A plan abandoned cannot form the basis of a discharge	23
IV. When consent fails the plan fails	25
Composition is a contract, which here is abandoned by one party, who thereafter cannot compel enforcement	25
V. There may even be circumstances where a plan of composition confirmed by interlocutory decree may be set aside prior to discharge by final decree	27
Conclusion	28

Table of Authorities Cited

Cases

	Pages
American United Mutual Life Ins. Co. v. City of Avon Park, 311 U. S. 138, 61 S. Ct. 157	22, 23
American United Mutual Life Insurance Company v. Haines City, Florida, 117 Fed. (2d) 574	15, 21
City of Coral Gables v. Wright, ... U.S. ..... (No. 388, Mar. 13, 1944), 64 S. Ct. 779	26
Gentry v. City of Fort Lauderdale, 125 Fed. (2d) 52	21
Green v. City of Stuart, 135 Fed. (2d) 33 (U.S. Supreme Court on Nov. 8 denied petition for rehearing, 12 L.W. 3162)	26
In re Bay County, Florida, case No. 83, M., Bankruptcy, U.S.D., Northern Dist., Fla., Marianno Div., Jan. 6, 1942	27
In re Broadway Hotel Co., 131 Fed. (2d) 120	21
In re City of West Palm Beach, 96 Fed. (2d) 85	25
In re Paramount Publix Corp., 82 Fed. (2d) 230	21
Kelley v. Everglades Drainage Dist., 319 U.S. 415, 63 S. Ct. 1141	10
Leco Properties v. R. E. Crummer, 128 Fed. (2d) 110	24
Lorber v. Vista I. D., 127 Fed. (2d) 628	17
Meyer v. Kenmore Granville Hotel Co., 297 U.S. 160, at 164, 56 S. Ct. 405	20
Re Chicago M. St. P. & P. R. Co., 138 Fed. (2d) 235	15
U. S. v. Bekins, 304 U.S. 27, 58 S. Ct. 811	13
Ware v. R. E. Crummer & Co., 128 Fed. (2d) 114	23
Wayne Gas Co. v. Owens Ill. Glass Co., 300 U.S. 131, 137, 57 S. Ct. 382	16, 21
Wright v. Board of Public Instruction, 142 Fed. (2d) 577	16
Wright v. Coral Gables, 137 Fed. (2d) 182	26

Codes and Statutes

Pages

Act of June 22, 1938, c. 575, Section 3(b) (52 Stat. 940)... 2

Bankruptcy Act of 1898, as amended (11 U.S.C., Sections 401-404), Chapter IX..... 3

Cal. Stats. 1897, p. 254..... 3, 10
Cal. Stats. 1921, p. 1018..... 10

Division 11, Water Code of California, Chap. 368, Statutes of 1943 .....3, 10n

Judicial Code (28 U.S.C., par. 347(a)), Sec. 204a..... 2

Municipal Bankruptcy Act of August 16, 1937, c. 657 (50 Stat. 654), 11 U.S.C. 401-404, adding Sections 81-84..... 2

11 U.S.C. 403(f)..... 12

Text

University of Pennsylvania Law Review, Vol. 90, No. 5.... 24

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No.

J. R. MASON,
Petitioner,
vs.
GLENN-COLUSA IRRIGATION DISTRICT,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals for the Ninth Circuit

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the decision (R. 311, 318) of the Circuit Court of Appeals for the Ninth Circuit made in the above entitled cause on June 20, 1944, which reverses the

order denying petition for final decree of the District Court for the Northern District of California, Southern Division, rendered against the respondent herein on June 2, 1943. (R. 295.)

OPINION BELOW.

Opinion of Circuit Court of Appeals, ...Fed. (2d) ..... (R. 311.)

JURISDICTION.

The decision of the Circuit Court of Appeals was rendered June 20, 1944. (R. 318.) The mandate was stayed until disposition of the case by this Court. (Not in Record.) The jurisdiction of this Court is invoked under Sec. 204a of the Judicial Code. (28 U.S.C., par. 347(a).)

STATUTES INVOLVED.

Municipal Bankruptcy Act of August 16, 1937, c. 657 (50 Stat. 654), 11 U.S.C. 401-404, adding Sections 81-84; and Act of June 22, 1938, c. 575, Section 3(b). (52 Stat. 940.)

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is a proceeding brought by the respondent Glenn-Colusa Irrigation District, a California Irrigation District and a public corporation and state

governmental agency (organized under Cal. Stats. 1897, p. 254, as amended, known as "the California Irrigation District Act", being presently Division 11, Water Code of California, Chap. 368, Statutes of 1943), for readjustment of its debts under what is now Chapter IX of the Bankruptcy Act of 1898, as amended. (11 U.S.C., Sections 401-404.)

The interlocutory decree confirming the irrigation district's plan of composition was confirmed by the District Court on April 16, 1940. (R. 69.)

The district applied to the District Court for a final decree May 1, 1942. (R. 83.) The matter was submitted. (R. 93.) Petitioner J. R. Mason on behalf of himself and the other creditors (R. 143) moved the Court for an order setting aside the submission and denying the proposed final decree January 11, 1943. (R. 95, 96.) The final decree was denied by Hon. A. F. St. Sure, District Judge, February 23, 1943 (R. 148) without prejudice and upon further hearing denied. (R. 294.)

The irrigation district appealed and the Circuit Court of Appeals for the Ninth Circuit reversed the order denying the petition for a final decree on June 20, 1944. (R. 318.)

The order of the District Court was based on the principal ground that there was a deviation from and substantial modification of the plan approved by the interlocutory decree and that the plan had not been carried into effect. (R. 295.) The Circuit Court so interpreted the lower Court's order (R. 313) but held

that there had been no such modification or deviation. (R. 316.)

Thus the matter involved is largely one of law although there is some confusion as to what the plan of composition actually provided in the way of payments and how the plan should be interpreted.

The relation of the interlocutory to the final decree and the scope of the latter has never been passed upon by this Court.

QUESTIONS PRESENTED.

1. Where it is equitable for a taxing agency to raise and it is able to raise $802,500 from the Reconstruction Finance Corporation to pay its creditors, should they not receive the percentage on their claims that would result to them from a distribution of this amount, and where the plan of composition actually required the borrowing of only $660,943 thereof is there not such a deviation from and substantial modification of the plan approved by the interlocutory decree as warrants a holding that the plan has not been carried into effect?

2. Where the plan of composition disclosed an ability to borrow $802,500 in 1934 (bankruptcy petition filed in 1937), disburses only $660,943 to the creditors as the proceeds of the confirmed sale of the debtor's new refunding bonds under the interlocutory decree entered in 1940, and where the plan of composition provides and the interlocutory decree pro-

vides for the issuance of 4% refunding bonds to the Reconstruction Finance Corporation in the amount of $660,943 to mature serially from 1939 to 1968, commencing in 1939 with $14,500 and gradually increasing to $44,500 (R. 188), but the irrigation district by 1942 and prior to entry of a final decree has paid down its indebtedness to $425,000, has not the District Court jurisdiction and power to deny the petition for a final decree on the grounds that the debtor has not paid its creditors what it fairly and justly should pay?

3. Where the interlocutory decree as well as the plan of composition provide for the issuance of 4% refunding bonds to the Reconstruction Finance Corporation in exchange for the original bonds (R. 61), but the debtor before the entry of the final decree is able to and does obtain money at 3¼% and actually issues and sells its new refunding bonds to a new money lender, thus effecting a saving of $27,000, are not the creditors entitled to this saving instead of the debtor?

4. Where the debtor after the date of the interlocutory decree and prior to entry of a final decree has paid off and discharged the original indebtedness proposed to be composed in the bankruptcy proceedings by obtaining new credit not pursuant to the plan or the interlocutory decree confirming the plan, does not the jurisdiction of the bankruptcy Court to enter a final decree cease and is the bankruptcy Court not then required to dismiss the proceedings, or as in this case to deny a final decree?

Is not composition a contract, which when abandoned or departed from by the debtor it can no longer enforce? Can the consent of the majority bondholders survive the liquidation and cancellation of their bonds, when cancelled before the entry of a final decree?

REASONS FOR GRANTING WRIT OF CERTIORARI.

1. Neither the procedure and administration under the Municipal Bankruptcy Statute insofar as it pertains to the entry of the final decree nor the execution of the plan of composition has been considered in any opinion of this Court.

The matter is of considerable public importance.

2. Many public debtors after the adoption of a plan of composition and even after the entry of an interlocutory decree have been able to obtain cheaper money. Until the plan is finally executed and a decree so determining entered, we contend that benefits so derived by the debtor justly belong to the creditors.

3. Where the interlocutory decree shows it is equitable for the debtor to borrow $802,500, and this sum of money can be borrowed, the intricacy of the plan of composition, we submit, should not defeat the right of the creditors to pro rata distribution.

4. We submit this Court should determine that the District Court is empowered to interpret the interlocutory decree and even to modify it.

5. We submit that this Court should determine that where the debt represented in the composition

has been fully liquidated and cancelled before jurisdiction of the bankruptcy Court ceases and before final decree, the proceedings should be dismissed.

Wherefore, petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit commanding that Court to certify and to send to this Court for its review and determination a full and complete transcript of the record and of the proceedings of said Court in the case numbered and entitled in its dockets as "No. 10,529, Glenn-Colusa Irrigation District, Appellant, vs. J. R. Mason, Appellee", and that the decree of said Court be reversed by this Court with directions to dismiss the bill and appeal and for such other relief as to this Court may seem proper.

Dated, Turlock, California,
August 23, 1944.

J. R. MASON,
Petitioner,
W. COBURN COOK,
Counsel for Petitioner.